

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.600 of 2021 (O&M)

Reserved on : 28.03.2022

Pronounced on : 19.04.2022

Dr. Bhupinderpal Singh Gill

....Appellant

VERSUS

State of Punjab and others

....Respondent

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. G.S. Bal, Senior Advocate with
Mr. D.S. Gill, Advocate for the appellant.

Mr. SPS Tinna, Addl. A.G. Punjab.

VIKAS SURI, J.

This Letters Patent Appeal has been preferred being aggrieved against the judgment dated 26.02.2021 passed in CWP No.34272 of 2019 titled *Bhupinder Pal Singh Gill vs. State of Punjab and others* and the order dated 20.04.2021 dismissing the review application filed against the same, whereby the challenge to the inquiry report dated 07.09.2018 (Annexure P-11) and punishment order dated 11.10.2019 (Annexure P-13) has been negated and the writ petition was resultantly dismissed.

The factual matrix needs to be tersely noticed for discussion of the present appeal. The writ petitioner, appellant herein, had joined as Medical Officer at the Punjab Civil Medical Services on 05.04.1983 through selection by the Punjab Public Service Commission. As per service conditions, he was to superannuate on 31.03.2017, on completion of 58 years of age. During his service, he had been promoted as Senior Medical Officer and was working as such, preceding his retirement. On 27.01.2017,

the writ petitioner had applied to the Civil Surgeon for casual leave for 28.01.2017, 30.01.2017 and 31.01.2017 and thereafter proceeded on leave, as per practice followed earlier. On 20.03.2017, that is 11 days prior to his superannuation, the charge-sheet (Annexure P-1) was issued to the writ petitioner, wherein the following charges were made:-

- “1. Non compliance of the directions of the Election Commission.
2. To proceed without getting the leave sanctioned.
3. None taking part in the pulse polio program and giving threats for legal action to the Senior Assistant of the office of the Civil Surgeon.
4. Non compliance with the orders of the superior officers.”

The basis of the issuance of the charge-sheet was that the writ petitioner had proceeded on casual leave without waiting for the leave to be sanctioned, which was stated to have been declined, relying upon the instructions issued by the Punjab Health System Corporation on 06.01.2017 in view of the Vidhan Sabha Elections that were announced to be held in February, 2017. The said charges were not accepted by the writ petitioner, however, in the departmental inquiry the same were recorded to be proved except for the second part of charge No.3. The concluding part of the inquiry report dated 07.09.2018 (Annexure P-11) reads as,

“Keeping in view the above, all the charges No 1 to 4 levelled in the charge-sheet against Sh. Bhupinder Singh Gill. Service No. 3674, Senior Medical Officer (Retd) are proved, but so far as the matter of giving threat to take legal action against the Assistant of the office of Civil Surgeon that is not proved.”

The writ petitioner filed a detailed reply dated 19.09.2018 (Annexure P-12) to the inquiry report. The same was filed refuting the factual narration recorded in the said inquiry report. The Principal Secretary, Department of Health and Family Welfare, Punjab after granting an opportunity of hearing to the writ petitioner, proceeded to inflict punishment and imposed 2% cut in the pension with cumulative/permanent effect vide the order dated 11.10.2019 (Annexure P-13).

The aforesaid inquiry report (Annexure P-11) and punishment order (Annexure P-13) were challenged by way of a writ petition and the present intra-court appeal has arisen from the decision of the said petition.

We have heard learned counsel for the parties and with their able assistance, gone through the record of the case.

Learned Senior counsel for the appellant-writ petitioner contends that the appellant was neither assigned any duty in the elections nor he was given any duty in the Pulse Polio Programme. It is submitted that the said factual aspect stands proved on the record and also admitted in the cross-examination of witness (PW/1) Shri Balwinder Singh, Clerk, Office of Civil Surgeon, Sangrur. Reference has been made to question and answer Nos.8 and 9 contained in the cross-examination, which read as under:-

- 8) Question : Whether you can show me any letter regarding my duty for Pulse Polio NID 29-01-17 to 31-01-17?
- Answer : As per the record, there was no duty of yours for Pulse Polio NID 29-01-17 to 31-01-17, which is correct as per my Section/Branch.
- 9) Question : Tell me regarding election duty assigned by Election Commission, for Vidhan Sabha held in February 2017/March 2017.
- Answer : As per the record, no election duty was assigned by the Election Commission to you.

It is further submitted that the writ petitioner had sought casual leave to attend to his court cases, the details and dates of hearing of which were specified in the application (Annexure P-7) itself. It is also sought to be urged that the charge-sheet had been issued on account of the grudge harboured by the high rank officials, who had been impleaded by name, in the cases instituted by the writ petitioner and the leave had been sought for pursuing and attending the said cases. It has also been pointed out from the inquiry report, the very basis of the charge-sheet that the appellant had proceeded on leave despite the same having been cancelled, has also been found to be wanting in substance, as it has not been proved on the record that the alleged cancellation was ever communicated to the writ petitioner. The concerned senior assistant had not appeared before the inquiry officer and neither was there any material on record or detail of call recording conversation of telephone. Thus, the said factum also could not be taken to have been proved, being hear-say. The relevant finding touching upon the said aspect, as recorded in the inquiry report, reads as under:-

“So far as the charge to give threat to take legal action against Sh. Rakesh Kumar, Senior Assistant office of Civil Surgeon, Sangrur, in this regard neither the concerned Senior Assistant has been produced as a witness nor any record or detail of call regarding conversation on telephone with the Delinquent has been produced by the Prosecution. Because the conversation of the concerned Senior Assistant of the office of Civil Surgeon had taken place with the Delinquent, which, as per the record, was brought by him in the notice of Civil Surgeon. But hear say evidence as per the Indian Evidence Act cannot be admitted as a proof. Therefore, to give threats from the Delinquent Doctor to Senior Assistant, office of Civil Surgeon, Sangrur to take legal action, due to non-submission of any proof by the PO, this charge is not proved.”

It has been vehemently urged that with regard to the alleged cancellation of the leave in question, no letter had been written by the Civil Surgeon, Sangrur or the Director, Health and Family Welfare, Punjab. The said factum has been duly admitted by the official witness, referring from the record, before the inquiring authority. Thus, it has also been urged that in view of the above factual matrix, the authorities have been vindictive and thus, punishment disproportionate to the alleged charges was awarded.

Per contra, learned State counsel has defended the inquiry report as well as the order inflicting punishment and has firmly maintained that the competent authority has passed the order after taking into consideration all the relevant aspects including the reply by the petitioner. It is submitted that the genesis of not permitting casual leave and issuance of the charge-sheet was that on 06.01.2017 the Punjab Health System Corporation had issued instructions that the Specialist Doctors, General Medical Officers or other Para Medical Staff shall not proceed on leave during election and if it is required in special cases, it will be only with the prior approval of the Director Health and therefore, the Writ Court has rightly not gone into the factual aspect whether the charges stood proved or not and 2% permanent cut in pension was rightly maintained.

To refute the submissions of the learned State counsel, it has been submitted that the petitioner was enforcing his fundamental right to seek judicial redress against the mighty State. Accordingly casual leave had been applied for and the litigating parties being unequal, the Courts of law are to balance the scales of equality and justice to protect the weaker party from harm that is occasioned on account of the wide disparity between the parties. Reference has been made to the reply to the inquiry report, dated 19.09.2018 (Annexure P-12), to vehemently urge that the authorities have

been biased and thus, have acted arbitrarily being in dominant position. Para Nos. 10 and 15 of the said reply read as under:-

“10. I had taken the casual leave for my below noted cases:

- a) Case No. COCP 2304 of 2013 fixed for hearing dated 30-01-2017. This contempt petition was against Smt, Vini Mahajan, Principal Secretary, Health and Family Welfare Department, Punjab. The case is titled " Dr. Bhupinder Pal Singh Gill V/s Smt. Vini Mahajan and others",
- b) Case No. CWP 15356 of 2015 Filed for hearing dated 3101-2017.
- c) Due to grudge of these cases, chargesheet was issued by Dr. Subodh Gupta, Civil Surgeon, Sangrur and Smt. Vini Mahajan, I.A.S. Additional Chief Secretary.”

“15. CWP 23496 of 2016 “Titled Dr. Bhupinder Pal Singh Gill Versus State of Punjab and others----- . In this C.W.P. Dr. Subodh Gupta and Smt. Vini Mahajan are by name parties and due to revenge they have filed this case against me, so that I could not get extension in service. This action on their behalf is with the intention of revenge and grudge.”

At the cost of repetition, learned counsel for the appellant has urged that it was brought on record that in the past 34 years of service, no letter sanctioning casual leave has ever been issued and on 27.01.2017, he was not given any telephonic message not to go on leave. In fact, the inquiry report has also categorically held that neither the concerned senior assistant has been produced as a witness nor any record/detail of call regarding conversation on telephone with the delinquent (writ petitioner) has been produced by the prosecution. Thus, the inquiring authority has correctly held that hear-say evidence cannot be admitted as a proof and has also correctly held the second part of charge No.3 not to have been proved on that count. Moreover, the charge which was with regard to election duty or participation in Pulse Polio Programme, have also been fallen flat in view of the cross-examination of PW/1, noticed above.

Learned senior counsel would submit to impress upon this Court that the punishing authority or the learned Single Judge has not examined the disproportional aspect of the punishment inflicted, in light of the settled legal principles. There is no discussion or consideration of the past service record, length of service, absence of complaints or misdemeanour in the past, the factum that the charge sheet was issued only 11 days prior to superannuation and that the appellant/writ petitioner was in litigation with the employer authorities. He was actively pursuing contempt proceedings taken out against the Principal Secretary, Health and Family Welfare Department, Punjab, which has also not been noticed or considered at all.

It is, thus, submitted that the writ petitioner had come into service on merits through open competition and selection by the Punjab Public Service Commission and thereafter, he also earned promotion. In his service of more than 3 decades, such a situation had never arisen and such harsh punishment that operates in perpetuity has been inflicted only to teach a lesson to the writ petitioner for litigating against highly placed officials and for impleading them by name. Moreover, the department had not even remotely suggested that any loss has been caused on account of the writ petitioner having proceeded on casual leave, as per past practice.

Reliance has been placed upon the judgment of a Co-ordinate Bench in *Jagdish Mitter vs. Central Administrative Tribunal and others* CWP No.568 of 2013, decided on 19.05.2014, wherein the authorities had imposed a cut of 5% in pension for lacking supervision, particularly when there was no proof of monetary loss and the same was held to be wholly disproportionate to the misconduct proved against the delinquent therein and

the same was modified to that of 5% cut in pension for a period of 5 years, instead of being in perpetuity.

This Court in the matter of *Dr. Swaranjit Singh vs. Central Administrative Tribunal, Chandigarh and others*, 2022(2) PLR 1, after noticing and following the ratio of the judgments of the Apex Court in *Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Assn. and another*, (2007) 4 SCC 669 and *Charanjit Lamba vs. Commanding Officer, Army Southern Command and others*, (2010) 11 SCC 314, exercised jurisdiction by remedying punishment disproportionate to the misconduct proved as the same was sufficient to shock the conscience of the Court.

In the present case also, the petitioner has put in service of 34 years and not an iota of material has been brought on record to even remotely suggest that the writ petitioner had been a trouble maker or undisciplined employee or habitual of absenting himself from work without permission. On the contrary, the factors that ostensibly appear to have influenced the competent authority have also been candidly pleaded and brought on record i.e. actively pursuing litigation in which the highest authority of the department i.e. Principal Secretary, Health and Family Welfare Department, Punjab was as such a party respondent by name, as contemnor, in COCP No.2304 of 2013 titled "*Dr. Bhupinder Pal Singh Gill vs. Smt. Vini Mahajan and others*". No material has been brought to our notice that the aforesaid factual aspect was ever denied or refuted or appropriately dealt with, at the time of imposing the punishment.

Keeping in view the above discussion, the material available on record, ratio of the judgments referred to and the peculiar facts and circumstances, we are of the considered opinion that the punishment

inflicted on the writ petitioner being a 2% cut in pension, in perpetuity, even if the finding with regard to the charges is left untouched, is disproportionate to the misconduct and is sufficient to shock the conscience of the Court. Thus, the writ petitioner does not deserve to be treated any differently and as such taking a consistent view, the present appeal is liable to be allowed partly and the order of punishment deserves to be modified accordingly. Therefore, the ends of justice would be met if the impugned punishment is modified to be for a limited specific period other than being in perpetuity i.e. with cumulative effect. None the less, the same would still act as a deterrent for other employees to discharge the duties in a proper manner and remain careful to follow all instructions issued from time to time.

Accordingly, the order dated 26.02.2021 and the order dated 28.04.2021 passed by the writ Court are set aside and the order dated 11.10.2019 (Annexure P-13) passed by Principal Secretary, Punjab Government, Health and Family Welfare Department, imposing 2% cut in pension with cumulative/permanent effect, is modified to that of 2% cut in pension for a period of 5 years. Consequently, full pension would be restored on the completion of five years period from the date the inflicted punishment has been effected.

The present Letters Patent Appeal is allowed partially in the above terms. No order as to costs.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 19, 2022
Sachin M.

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No